



ARGEO PAUL CELLUCCI
GOVERNOR

**THE COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION
399 WASHINGTON STREET 4TH FLOOR
BOSTON, MA 02108-5213**

TELEPHONE: (617) 727-3505
FAX: (617) 727-4402

HELEN A. MORESCHI
CHAIRWOMAN

MARK A. PREBLE
COMMISSIONER

WRITTEN INVESTIGATION PROCEDURE

A. Initial Filing

The charging party must submit its written evidence and arguments to the Executive Secretary of the Commission either at the time of filing a charge or within twenty (20) calendar days from the date of the Commission's Notice that a charge has been docketed.

B. Submission Requirements (including time deadlines):

(1) Information Required of Charging Party

The charging party must file the following information with the Executive Secretary, **with a copy to each other party**, either when the charge is filed or within twenty (20) calendar days of the date of the Commission's Notice that a charge has been docketed. **The submission should be clearly labeled "Charging Party's Written Submission,"** and must contain:

- (a) **Number Allegations:** A clear and concise statement of the relevant facts constituting the prohibited labor practice, including the name(s) of the individuals involved in the prohibited labor practice, the times and places of the particular act(s) giving rise to the dispute, and the specific provisions of either G.L. c.150E or G.L. c.150A alleged to have been violated. The charging party's claims must be in the form of numbered allegations. The written submission must be signed and the signer must affirm that the information in the written submission is true to the best of the signer's "information and belief."
- (b) **Affidavits and Documents:** Charging Party is encouraged to provide sworn affidavits from witnesses with personal knowledge of the facts alleged in the written submission. If affidavits are supplied to establish the facts of the charge they should be based upon the affiant's personal knowledge. Evidence from people who lack personal knowledge of the facts to which they attest is less persuasive than sworn evidence from people with personal knowledge of the facts to which they swear and may not be sufficient to establish "probable cause" to believe that the alleged facts demonstrate conduct which violates the Law. The charging party may either quote from or include documentary evidence, such as: collective bargaining agreement, letters, notices, pay records, etc, that are necessary to support the charge. The charging party's submission must be sufficient to establish probable cause to believe that either G.L. c. 150E or c.150A has been violated.
- (c) **Relief Sought:** A statement of the full relief sought by the charging party, if different from that specified in the charge filed with the Commission.
- (d) **Settlement Proposals:** The charging party should state whether settlement has been proposed; and, if settlement has not been proposed, should explain why. The Commission may schedule a settlement conference at any time at the request of the Charging Party if

the Commission concludes that a settlement conference would be helpful to resolution of the case.

- (e) **Grievance Information:** Grievance Information: Information about any grievance(s) related to conduct alleged to violate the law, the status of any grievance(s), a single copy of the grievance and an explanation as to why the Commission should or should not defer to the grievance or arbitral process.
- (f) **Other Information:** Please include any additional information concerning relief sought, settlement efforts or other information relevant to the Commission's processing of this case.

(2) The Respondent's Response

Any response which the respondent wishes to make must be written and must be filed with the Executive Secretary **with a copy to each other party** within twenty (20) calendar days after having received a copy of the charging party's written submission. The Response should be labeled "Respondent's Response" and include the Commission's case number.

- a) **Affidavits and Documents:** If the respondent does not dispute the facts alleged by the charging party no affidavits need be filed, and the respondent should note that the facts are not disputed. If, however, the respondent wishes to contradict facts alleged by the charging party, the respondent is encouraged to supply sworn affidavits containing the contradicting facts. Affidavits should be written by people who have personal knowledge of the stated facts. Where appropriate, documentary evidence supporting the respondent's position should also be included or quoted. Evidence from people who lack personal knowledge of the facts to which they attest is less persuasive than sworn evidence from people with personal knowledge of the facts to which they swear; and may not be sufficient to rebut sworn evidence submitted by the Charging Party. Thus, if the respondent chooses not to supply sworn affidavits, but instead to rely upon information attested to by a party lacking personal knowledge of the facts, the respondent's evidence will be accorded less weight than sworn affidavits submitted by the Charging Party from witnesses with personal knowledge of the facts.
- (b) **Affirmative Defenses:** The respondent should separately identify any affirmative defenses upon which it relies, and support its assertions with sworn statements of facts (which can be sworn as true based upon the signers "information and belief") and documentary evidence where applicable.
- (c) **Deferral or Referral:** If deferral to arbitration is sought or the parties are involved in mediation the respondent must inform the Commission if it is willing to waive any contractual time defenses to arbitration, or other objections to mediation.
- (d) **Settlement Proposals:** The respondent may suggest settlement proposals or explain why the matter has not yet been settled. The Commission may schedule a settlement conference at any time at the request of the Respondent if the Commission concludes that a settlement conference would be helpful to resolution of the case.

(3) Intervenors

- a) Any employee, employer or employee organization that moves for intervention pursuant to 456 CMR 12.03 may also file a written statement in support of its position concerning the

charge. The statement must be accompanied by sworn factual affidavits and all documentary evidence on which the intervenor relies. The intervenor must file all statements and supporting evidence with the Executive Secretary and provide a complete copy to all other parties to the case within twenty (20) days of receipt of a copy of the charging party's submission to the Commission or within ten (10) days of receipt of a copy of the respondent's submission.

- b) Parties to the case must state whether they oppose or do not oppose any motion to intervene either when they file their written submission or within ten (10) days of receipt of the motion, which ever is later. Motions to intervene usually are decided after receipt of all written submissions. Persons who have moved to intervene shall be treated as "parties" for the purpose of serving documents prior to the Commission's ruling on their motion to intervene.

(4) Charging Party's Reply

The charging party will have ten (10) calendar days from receipt of the respondent's submission to file a written reply with the Executive Secretary and with **all other parties to the case**. The written reply must fully explain any disagreement with the facts and statements made in the respondent's response. If the charging party disputes facts alleged by the respondent, the charging party must identify the disputed facts and must include relevant sworn affidavit and, where appropriate, documentary evidence to support the charging party's position.

(5) Unopposed Extensions of Time

Parties may extend by mutual agreement any time for filing by giving the Commission written notice of the time extension to which they have agreed. All such extensions are limited to a combined total of three months per case, except for good cause when permitted by the Commission.

(6) Opposed Requests

Any request for Commission permission to extend the time for filing which is opposed by another party to the case must be filed in writing with the Executive Secretary at least three (3) days prior to the date when the submission is due and must contain the position of the other party(ies) concerning the request.

C. Commission Response

After review of all submissions by the parties the Commission will issue a probable cause determination. The Charging Party has the burden of presenting sufficient evidence to give the Commissioners "probable cause" to believe that the Respondent has violated the law. If the respondent chooses not to file a response, the Commission will make a probable cause determination based solely on the basis of the Charging Party's written submission. If the Respondent provides evidence that facts alleged by the Charging Party are untrue, it is unlikely that the Commission will find that the Charging Party has met its burden of establishing probable cause unless the facts alleged by the Charging Party have been submitted in affidavit form. If the Respondent chooses to support its assertions with affidavit evidence, the Commission will evaluate the adequacy of the affidavit evidence from both parties to determine whether the Charging Party has established probable cause.

The Commission may contact the parties to encourage settlement and may schedule a settlement conference at any time pursuant to 456 CMR 12.10.

D. Exceptions to Written Investigation Procedure

The Commission may grant a request to conduct an in-office investigation in lieu of the written investigation procedure only in extraordinary circumstances and for good cause.

E. General Filing Requirements

When referenced in this Notice the term “day” shall mean calendar days, including Saturdays, Sundays and legal holidays (456 CMR 11.06). All times are calculated according to Commission rule 12.07(1) which specifies:

- (1) In computing any period of time prescribed or allowed by these rules and regulations, the day of the act, event or default when the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday including Suffolk County legal holidays.

All filings with the Commission shall be made in accordance with Commission Rule 12.11 which specifies:

- (1) All pleadings, written motions, briefs or memoranda filed by any party in connection with any matter pending before the Commission shall be on paper measuring eight and one half (8 ½) inches in width and eleven (11) inches in length.
- (2) All pleadings, written motions, briefs and memoranda shall be typewritten and double-spaced.
- (3) An original and four¹ copies of all pleadings, written motions, briefs or memoranda shall be filed with the Commission.
- (4) All documents shall be deemed filed upon receipt by the Commission.

All filings must also contain a certificate of service. 456 CMR 12.02.

¹ Although Rule 12.11 requires submission of an original and four copies of documents filed with the Commission, the Commission has decided to suspend application of the rule to written investigation materials for the convenience of the parties. Please submit one copy of any long document, such as a collective bargaining agreement, or evidence such as affidavits or documents. Please submit an original and two copies of all other documents containing legal argument, or factual narratives.